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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FERGUSON, MICHAEL P

ART UNIT

PAPER NUMBER

3679

MAIL DATE

DELIVERY MODE

01/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

NOTICE OF NON-RESPONSIVE AMENDMENT

Response to Amendment

1. The reply filed on October 15, 2009 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

Election/Restrictions

2. New claims 16-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. New claims 16-29, drawn to a fixing device for an air-conditioning system, comprising a housing, classified in class 165, subclass 178.
- II. Original claims 1-13, drawn to a fixing device, classified in class 403, subclass 389.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the air-conditioning system claimed in the newly amended claims can use a molded plastic positioning element, opposed to the punched sheet-metal positioning element claimed in original claims 1-13. The subcombination has separate utility such as the fixing device claimed in

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original claims 1-13 can be used within a system comprising a separate fastener for rotationally securing the positioning element to a housing, opposed to the system comprising a housing comprising projections claimed in the newly amended claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-4, 9-12, 14 and 15 are withdrawn from consideration as being directed to a non-elected invention; thus rendering the amendment non-responsive. See 37 CFR 1.142(b) and MPEP § 821.03.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL P. FERGUSON whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (6:30am-3:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MPF
01/11/10

/Michael P. Ferguson/
Primary Examiner, Art Unit 3679